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14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 JOHN JACOB OLIVAS,

20 Defendant.

ED CR No. 18-231-JGB

GOVERNMENT'S MOTION IN LIMINE TO
ADMIT BUSINESS RECORDS UNDER THE
SELF-AUTHENTICATION PROVISIONS OF
FEDERAL RULE OF EVIDENCE 902(11);
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
FRANCES S. LEWIS AND EXHIBITS 1-5

Hearing Date: November 30, 2021
Hearing Time: 8:30 a.m.
Location: Courtroom of the
Hon. Jesús G.
Bernal

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25 Plaintiff United States of America, by and through its counsel
26 of record, the United States Attorney for the Central District of
27 California and Assistant United States Attorneys Eli A. Alcaraz and
28 Frances S. Lewis hereby moves the Court in limine to admit into

1 evidence business records of the businesses referenced below under
2 the procedures of Federal Rule of Evidence 902(11).

3 The government produced the business records and corresponding
4 Rule 902(11) certifications in discovery and provided written notice
5 of its intention to introduce such business records in this manner at
6 trial and asked for counsel's position. Defense counsel represented
7 she would provide her position at the final pretrial conference on
8 Monday, November 29, 2021.

9 This motion is based upon the attached memorandum of points and
10 authorities, the attached Declaration of Frances S. Lewis and
11 accompanying Exhibits 1-5, the files and records in this case, and
12 any such further evidence and/or argument the Court may wish to
13 consider at the hearing and in determining this matter.

14 Dated: November 27, 2021

Respectfully submitted,

15 TRACY L. WILKISON
16 United States Attorney

17 SCOTT M. GARRINGER
18 Assistant United States Attorney
Chief, Criminal Division

19 /s/
ELI A. ALCARAZ
20 FRANCES S. LEWIS
Assistant United States Attorneys

21 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTUAL BACKGROUND

Defendant John Jacob Olivas ("defendant") used his position and power as a federal law enforcement agent to sexually abuse and attempt to abuse two of his intimate partners and prevent them from reporting his assaults to law enforcement. Defendant's abuse of his federal law enforcement authority violated the victims' constitutional rights: namely, their rights to liberty and bodily integrity. For three specific sexual assaults of K.L. and N.B., defendant is charged with three counts of deprivation of rights under color of law, in violation of 18 U.S.C. § 242.

The government hereby moves to introduce certain business records at trial under the self-authentication provisions of Federal Rule of Evidence 902(11). The government gave written notice to defendant on November 21, 2021, and in subsequent communications, and defendant has indicated that he will provide his position at the pretrial conference on November 27, 2021. (Declaration of Frances S. Lewis ("Lewis Decl.") ¶¶ 3-8.)

II. ARGUMENT

Rule 902 of the Federal Rules of Evidence provides, in pertinent part:

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

. . . .

(11) The original or a copy of a domestic record that meets the requirements of Rule 803(6) (A)-(C), as shown by a certification of the custodian or another qualified person Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record - and must make the record and

certification available for inspection - so that the party has a fair opportunity to challenge them.

Fed. R. Evid. 902(11).¹

The government has produced in discovery business records from the custodians of records (or other qualified persons) of various businesses, namely, Verizon, Sprint, AT&T, Southern California Edison, and Facebook, as listed below. Moreover, the government has produced the declarations from the respective custodians of records, and true and correct copies of these declarations are attached hereto as Exhibits 1-5. The government therefore seeks to introduce the following exhibits, or excerpts therefrom, at trial:

Exhibit to Lewis Decl.	Source	Bates	Custodian Decl.
1	Verizon	00014544-14891	00014549-550
2	Sprint	00014915-14946	00014913-914
3	AT&T	00015096-16350	00015096-099
4	Southern California Edison	0010361-364	00103605
5	Facebook	00103521-103604	00103556

¹ Rule 803(6) of the Federal Rules of Evidence provides, in pertinent part:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

. . . .

(6) A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by - or from information transmitted by - someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) . . . ; and

(E) neither the source of the information nor the method or circumstances of preparation indicate a lack of trustworthiness.

Fed. R. Evid. 803(6).

1 Certification under Rule 902(11) obviates the need for the government
2 to authenticate business records at trial and permits the records to
3 be admitted under Federal Rule of Evidence 803(6). See Fed. R. Evid.
4 902(11). Thus, in order to admit the above-referenced business
5 records as exhibits at trial, the government should not be required
6 to call the custodians of records for these businesses to testify.
7 These business records should be admissible based on the
8 certifications.

9 The government reserves the right to provide further notice of
10 other entities from which it intends to introduce business records
11 pursuant to Federal Rule of Evidence 902(11).

12 **III. CONCLUSION**

13 For the foregoing reasons, the government respectfully requests
14 that this Court grant its motion in limine to admit the business
15 records referenced above under Federal Rule of Evidence 902(11).
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